

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

VICTORIA JOY GODWIN,

Plaintiff,

v.

SENIOR GARDEN APARTMENTS, *et al.*,

Defendants.

Case No. 2:17-cv-02178-MMD-DJA

ORDER

I. SUMMARY

Before the Court are two filings by Plaintiff Victoria Joy Godwin seeking vacatur of the Court's order issued on April 13, 2020 (ECF No. 42), accepting in its entirety the Report and Recommendation of Magistrate Judge Daniel J. Albregts ("R&R") (ECF No. 36), to which Plaintiff objected ("Objection") (ECF No. 39) ("Order"). (ECF Nos. 54, 56). The first motion (ECF No. 54) is moot because it is superseded by the later filed motion to vacate ("Motion") (ECF No. 56). Ultimately, the Court denies the Motion for the reasons provided below.

II. BACKGROUND

The R&R recommended dismissing Plaintiff's sixth and seventh claims, as alleged in Plaintiff's third amended complaint ("TAC"), and permitting Plaintiff to proceed on her other claims. (See ECF No. 36; *see also* ECF No. 27.) Plaintiff thereafter filed her Objection. (ECF No. 39.) Upon a *de novo* review of the TAC and Objection, the Court overruled the latter and accepted the R&R in full. (ECF No. 42.) The Court agreed with the R&R that the two claims should be dismissed because Plaintiff had, *inter alia*: (1) exceeded the scope of permitted amendment as to both claims; (2) sought declaratory judgment which was not available to her based on her assertions in the seventh claim; and (3) her sixth claim was not cognizable. (See *generally id.*)

III. DISCUSSION

Plaintiff has not met the requirements of vacatur. A motion to vacate challenging the merits of the Court's order is properly brought under 60(b) or 59(e) of the Federal Rules of Civil Procedure. Plaintiff has not expressly argued either rule. (*See generally* ECF No. 56.) But for Plaintiff's benefit, the Court notes that Rule 59 permits a court to alter or amend a judgment. *See* Fed. R. Civ. P. 59(e). Under Rule 60(b), a court may grant relief from a final judgment, order, or proceeding upon a showing of the following:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).¹

The Court finds that Plaintiff's Motion is most appropriately considered under Rule 60. Plaintiff appears to rely on Rule 60(b)(4) in arguing that the Order is null and void and also claiming that the Court abused its discretion in dismissing the sixth and seventh claims. (*See generally* ECF No. 56.) Plaintiff materially relies on the U.S. Supreme Court's recent decision in *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020)² to support her contentions in an effort to have this Court reconsider the dismissal of the noted claims. The *Sineneng-Smith* decision was issued after the Court issued its Order—on May 7, 2020. *See id.* In any event, it is not applicable to this case.

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¹A motion to reconsider must set forth "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). "A motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled." *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005). A district court may also decline to consider claims and issues that were not raised until a motion for reconsideration. *Hopkins v. Andaya*, 958 F.2d 881, 889 n.5 (9th Cir. 1992), *impliedly overruled on other grounds in Federman v. County of Kern*, 61 F. App'x 438, 440 (9th Cir. 2003).

²Plaintiff also requests judicial notice of this case (ECF No. 55), which the Court will grant.

1 In *Sineneng-Smith*, the U.S. Supreme Court vacated and remanded a ruling of the
 2 Ninth Circuit Court of Appeals—holding, 9-0, that the appellate court abused its discretion
 3 by drastically departing from the principle of party presentation. 140 S. Ct. at 1582. The
 4 Court concluded that the appellate court reached beyond the issues raised by the
 5 respondent and by ordering additional briefing by non-parties to decide whether 8 U.S.C.
 6 § 1324(a)(1)(A)(iv) (concerning immigration) is unconstitutionally overbroad. See *id.* at
 7 1577–78, 1580–81. In Plaintiff’s own words, in the case the Supreme Court “decried the
 8 practice of judges ruling on issues not framed by any party.” (ECF No. 56 at 5.)

9 This case is not remotely in *Sineneng-Smith*’s ballpark. Here, the Court’s Order
 10 concerns the allegations Plaintiff asserts in the TAC. The Order is precisely about
 11 Plaintiff’s failure to properly and adequately allege her claims—not about the Court
 12 considering issues not presented to it. Therefore, *Sineneng-Smith* is of no avail to Plaintiff
 13 to support a finding that the Order should be voided or that the Court abused its discretion
 14 in issuing the Order. Plaintiff has not otherwise provided any reason warranting
 15 reconsideration of the Court’s Order.³ The Court will therefore deny the Motion.⁴

16 **IV. CONCLUSION**

17 It is therefore ordered that Plaintiff’s request for judicial notice of *United States v.*
 18 *Sineneng-Smith*, 140 S. Ct. 1575 (2020) (ECF No. 55) is granted.

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21 ³As with her other briefing, Plaintiff’s Motion is largely a series of unhelpful
 22 assertions and recitations, chiefly taking issue with the fact that the Court adopted the
 23 R&R (*e.g.*, ECF No. 56 at 6–7). As the Court noted in the Order, it is empowered to adopt
 24 or reject a report and recommendation under 28 U.S.C. § 636(b)(1) (ECF No. 42 at 1). It
 25 would serve Plaintiff well to focus, as much as possible, on the facts and law helpful—or
 26 better yet necessary—to the Court’s ruling.

27 ⁴Plaintiff also takes issue that the dismissal of the sixth and seventh claims are with
 28 prejudice (*e.g.*, ECF No. 56 at 13, 18). To reiterate, the seventh claim was dismissed
 largely because Plaintiff stated no basis to support a request for declaratory judgment
 (ECF No. 42 at 3). The sixth claim was dismissed with prejudice expressly because
 “Plaintiff has been thrice allowed to amend it to no avail.” (*Id.* at 4.) Additionally, the
 inclusion of the sections apparently concerning joinder under Rule 19 and 20 of the
 Federal Rules of Civil Procedure (ECF No. 56 at 17–19) is not clearly relevant to the
 Motion, and, even if it was, it does not alter the Court’s ruling denying the Motion here.

1 It is further ordered that Plaintiff's first filed motion to vacate (ECF No. 54) is denied
2 as moot because it is superseded by Plaintiff's later filed motion seeking the same.

3 It is further ordered that Plaintiff's second filed motion to vacate (ECF No. 56) is
4 denied.

5 DATED THIS 16th day of June 2020.

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8 MIRANDA M. DU
9 CHIEF UNITED STATES DISTRICT JUDGE
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